

Cambridge University Press

0521660270 - Genetic Privacy: A Challenge to Medico-Legal Norms

Graeme Laurie

Excerpt

[More information](#)

1

Health care, patient rights and privacy

Privacy as a problem

Privacy is a problem. Or rather, privacy causes problems. It causes problems for sociologists,¹ psychologists,² anthropologists,³ philosophers,⁴ politicians,⁵ doctors,⁶ lawyers,⁷ governments,⁸ states,⁹ communities,¹⁰ groups¹¹ and individuals.¹² The problems that it causes relate to its definition,¹³ its function,¹⁴ its nature,¹⁵ its utility,¹⁶ its value¹⁷ and its protection.¹⁸ The sheer extent of the difficulties is revealed by the length of the first few notes to this text.

¹ S. I. Benn and G. F. Gaus (eds.), *Public and Private in Social Life* (London, Croom Helm; New York, St. Martin's Press, 1983).

² See E. Goffman, *The Presentation of Self in Everyday Life* (London, Pelican Books, 1971), R. Ingham, 'Privacy and Psychology', in Y. D. Young (ed.), *Privacy* (Chichester, Wiley & Sons, 1979), ch. 2, S. M. Jouard, 'Some Psychological Aspects of Privacy' (1966) 31 *Law and Contemporary Problems* 307, P. A. Kelvin, 'Social Psychological Examination of Privacy' (1973) 12 *British Journal of Social and Clinical Psychology* 248, S. T. Margulis (ed.), 'Privacy as a Behavioural Phenomenon' (1977) 33 *Journal of Social Issues*, Issue No. 3.

³ See B. Moore, *Privacy: Studies in Social and Cultural History* (New York, M. E. Sharpe Inc., 1984), R. F. Murphy, 'Social Distance and the Veil' (1964) 6(1) *American Anthropologist* 1257, and A. Westin, 'The Origins of Modern Claims to Privacy', in F. D. Schoeman (ed.), *Philosophical Dimensions of Privacy* (Cambridge, Cambridge University Press, 1984), at 56–74, H. Arendt, *The Human Condition* (Chicago, University of Chicago Press, 1958).

⁴ J. Kupfer, 'Privacy, Autonomy and Self Concept' (1987) 24 *American Philosophical Quarterly* 81, G. Negley, 'Philosophical Views on the Value of Privacy' (1966) 31 *Law and Contemporary Problems* 319, J. H. Reiman, 'Privacy, Intimacy and Personhood' (1976) 6 *Philosophy and Public Affairs* 26, and generally, F. Schoeman (ed.), *Philosophical Dimensions of Privacy: An Anthology* (Cambridge, Cambridge University Press, 1984).

⁵ See J. Ames, 'Privacy Law Forced Back on the Agenda' (1992) 89(6) *Law Society's Gazette* 8.

⁶ K. Berg, 'Confidentiality Issues in Medical Genetics: The Need for Laws, Rules and Good Practices to Secure Optimal Disease Control', Second Symposium of the Council of Europe on Bioethics, Strasbourg, 30 November–2 December 1993, CDBI-SY-SP (93) 3, D. C. Wertz and J. C. Fletcher, 'Privacy and Disclosure in Medical Genetics Examined in an Ethics of Care' (1991) 5 *Bioethics* 212, G. Dworkin, 'Access to Medical Records: Discovery, Confidentiality and Privacy' (1979) 42 *Modern Law Review* 88, and T. Cantrell, 'Privacy: The Medical Problems', in Young, *Privacy*, ch. 9.

⁷ For example, G. Dworkin, 'Privacy and the Law', in Young, *Privacy*, ch. 5, R. Gavison, 'Privacy and the Limits of the Law' (1980) 89 *Yale Law Review* 421, B. S. Markesinis, 'Our Patchy Law of Privacy – Time to do Something about it' (1990) 53 *Modern Law Review* 802,

Cambridge University Press

0521660270 - Genetic Privacy: A Challenge to Medico-Legal Norms

Graeme Laurie

Excerpt

[More information](#)

One might wonder, as a result, what another text on privacy could meaningfully contribute to the debate. A first step to answering this question is to realise that the scope of privacy is so wide-ranging that no reasonable attempt can be made to analyse the concept in all of its facets and guises. This book examines the role of privacy in a health care setting. It considers patient privacy and the interface between medicine and law in the protection of individual rights as regards the provision of health care. In particular, the contribution of this work to the general debate about privacy lies in an examination of the privacy issues raised by what has been termed the New Genetics.

W. A. Parent, 'A New Definition for Privacy for the Law' (1983) 2 *Law and Philosophy* 305, W. L. Prosser, 'Privacy: A Legal Analysis' (1960) 48 *California Law Review* 338, R. Wacks, *Personal Information, Privacy and the Law* (Oxford, Clarendon Press, 1989), and S. D. Warren and L. D. Brandeis, 'The Right to Privacy' (1890–91) 4 *Harvard Law Review* 193.

- ⁸ See R. F. Hixson, *Privacy in a Public Society* (New York, Oxford University Press, 1987), J. P. Gould, 'Privacy and the Economics of Information' (1980) 9 *Journal of Legal Studies* 827, C. Mellors, 'Governments and the Individual: Their Secrecy and His Privacy', in Young, *Privacy*, p. 87, J. F. Handler and M. K. Rosenheim, 'Privacy in Welfare: Public Assistance and Juvenile Justice' (1966) 31 *Law and Contemporary Problems* 377, and W. A. Creech, 'The Privacy of Government Employees' (1966) 31 *Law and Contemporary Problems* 413.
- ⁹ See, for example, Article 8 of the European Convention for the Protection of Human Rights and Article 12 of the Universal Declaration of Human Rights, both of which provide for the protection of personal privacy. For comment on the former see L. G. Loucaides, 'Personality and Privacy Under the European Convention on Human Rights' (1990) 61 *British Yearbook of International Law* 175.
- ¹⁰ As Westin has commented, 'Needs for individual and group privacy and resulting social norms are present in virtually every society. Encompassing a vast range of activities, these needs affect basic areas of life for the individual, the intimate family group, and the community as a whole', A. Westin, *Privacy and Freedom* (London, Bodley Head, 1967), p. 13.
- ¹¹ F. D. Schoeman, 'Adolescent Confidentiality and Family Privacy', in G. Graham and H. LaFollette (eds.), *Person to Person* (Philadelphia, Temple University Press, 1989), pp. 213–34, I. N. Walden and R. N. Savage, 'Data Protection and Privacy Laws: Should Organisations Be Protected?' (1988) 37 *International and Comparative Law Quarterly* 337.
- ¹² L. Blom-Cooper, 'The Right to be Let Alone' (1989) 10 *Journal of Media Law and Practice* 53, J. Kupfer, 'Privacy, Autonomy and Self Concept' (1987) 24 *American Philosophical Quarterly* 81, S. I. Benn, 'Privacy, Freedom and Respect for Persons', in Schoeman, *Philosophical Dimensions of Privacy*, Gavison, 'Privacy and the Limits of Law', H. Gross, 'Privacy and Autonomy', in J. Feinberg and H. Gross, *Philosophy of Law* (2nd edn, Wadsworth Inc., USA, 1980), L. Henkin, 'Privacy and Autonomy' (1974) 74 *Columbia Law Review* 1410, C. Fried, 'Privacy' (1968) 77 *Yale Law Journal* 475.
- ¹³ W. A. Parent, 'A New Definition for Privacy for the Law' (1983) 2 *Law and Philosophy* 305, W. A. Parent, 'Recent Work on the Concept of Privacy' (1993) 20 *American Philosophical Quarterly* 341, Gavison, 'Privacy and the Limits of Law', R. A. Posner, 'The Right to Privacy' (1978) 12 *Georgia Law Review* 393, D. N. McCormick, 'Privacy: A Problem of Definition' (1974) 1 *British Journal of Law and Society* 75, Fried, 'Privacy'.
- ¹⁴ J. C. Innes, *Privacy, Intimacy and Isolation* (New York, Oxford University Press, 1992), S. I. Benn, 'Privacy, Freedom and Respect for Persons', in Schoeman, *Philosophical Dimensions of Privacy*, Gavison, 'Privacy and the Limits of Law', Fried, 'Privacy', and Murphy, 'Social Distance and the Veil'.

Cambridge University Press

0521660270 - Genetic Privacy: A Challenge to Medico-Legal Norms

Graeme Laurie

Excerpt

[More information](#)

The advent of modern genetic science and genetic testing has given rise to acute problems in the health care context, some real and others imaginary. For example, the discovery of a predisposition to a genetic condition in one individual often also reveals potential risks to the blood relatives of that individual. Thus, individual genetic information can unlock many secrets within the wider genetic family. There is, therefore, potential for conflict over access to, and control of, such information. Traditionally, the duty of confidentiality owed by a health care professional to a patient has provided an appropriate means by which personal health information has been kept secure. There are serious doubts, however, whether the issues that surround genetic information in the familial milieu can be adequately dealt with within the envelope of confidentiality. This is an amorphous and ill-defined duty that is compromised by its twin roles of protecting both the confidential relationship and the confidential information which arises from that relationship. Moreover, to the extent that the duty of confidentiality is solely concerned with keeping confidential information out of the public sphere, it says nothing about the duties that might be owed within the confidential relationship towards the subjects of the information so as to ensure, inter alia, that the personal interests of these individuals are not treated with a lack of respect by unwarranted uses of information with regard to the subjects themselves.

¹⁵ Much debate centres on the philosophical nature of privacy. Is it a right, a claim, an interest, an issue of control or a state of being? For a discussion of the possibilities and a review of the literature, see Schoeman, *Philosophical Dimensions of Privacy: An Anthology*, ch. 1.

¹⁶ J. H. Reiman, 'Privacy, Intimacy and Personhood' (1976) 6 *Philosophy and Public Affairs* 26, J. Rachels, 'Why Privacy Is Important' (1975) 4 *Philosophy and Public Affairs* 323, J. J. Thomson, 'The Right to Privacy' (1975) 4 *Philosophy and Public Affairs* 295, T. Scanlon, 'Thomson on Privacy' (1975) 4 *Philosophy and Public Affairs* 315.

¹⁷ Wacks, *Personal Information, Privacy and the Law*, Hixson, *Privacy in a Public Society*, Thomson, 'The Right to Privacy', Scanlon, 'Thomson on Privacy', and Negley, 'Philosophical Views on the Value of Privacy'.

¹⁸ Historically, this issue has given rise to much concern, but little productive action, in the United Kingdom. In the latter part of the twentieth century numerous attempts were made to pass some form of legislation to protect privacy. None succeeded. Several committees were established to examine the matter and report, such as the Younger Committee, Report of the Committee on Privacy, Cmnd 5012 (1972), and the Calcutt Committee, Report of the Committee on Privacy and Related Matters, Cm 1102 (1990), and in 1993 Calcutt re-examined the question of privacy legislation and recommended Parliamentary intervention (Review of Press Regulation, Cm 2135 (1993)). No direct legal protection resulted. It was not until the passing of the Data Protection Act 1998 in March 2000 and the Human Rights Act 1998 in October 2000 that anything approximating proper recognition and protection of privacy in the United Kingdom was realised.

Cambridge University Press

0521660270 - Genetic Privacy: A Challenge to Medico-Legal Norms

Graeme Laurie

Excerpt

[More information](#)

The principle of respect for patient autonomy – which has been described as the guiding ethical principle in health care and which has received unprecedented recognition by the laws of most Western states – is similarly ill-equipped to provide a comprehensive solution to the problems posed by familial genetic information. This is because the focus of an autonomy-based argument is largely on the individual and her ability to control aspects of her life. The ‘group’ nature of claims concerning family information poses a serious conceptual threat to this paradigm. Moreover, health care professionals frequently confuse the desire to respect autonomous patient choices with a desire to facilitate those choices and, as a result, patients are often placed in the invidious position of having to make choices that they might otherwise have avoided.

This book examines these, and other, problems and argues for the value of an appeal to privacy in seeking to resolve some of the more intractable issues. A unique definition of privacy is offered by which to address these dilemmas. The construct is also intended to enrich the discourse on the role and the limits of established principles in medical law and ethics, such as respect for patient autonomy and confidentiality. The work advocates a greater role for privacy in the health care setting; more specifically, it examines the need for stronger legal protection of privacy in the shadow of new challenges arising from advances in human genetics.

Establishing parameters

The quest for the essential character of the concept of privacy centres on the search for a means to establish an identifiable and sustainable interface between the public and private spheres of human life.¹⁹ Furthermore, because human lives are not passed in a social vacuum, privacy is also concerned with the regulation of the relationship between an individual and the society in which she lives.²⁰ Indeed, the two concepts of individual and society are inextricably linked – the definition of one provides, almost by analogy, the definition of the other. For example, Giddens defines *society* as ‘a cluster, or system, of institutionalised modes of conduct. To speak of “institutionalised” forms of social conduct is to refer to modes of belief and behaviour that occur and recur – or, as

¹⁹ See generally Benn and Gaus, *Public and Private in Social Life*.

²⁰ See Wacks, *Personal Information, Privacy and the Law*, p. 7, and J. P. Tomlinson, ‘Privacy and Law Enforcement’, in Young, *Privacy*, ch. 6.

Cambridge University Press

0521660270 - Genetic Privacy: A Challenge to Medico-Legal Norms

Graeme Laurie

Excerpt

[More information](#)

the terminology of modern social theory would have it, are socially *reproduced* – across long spans of time and space.²¹ Yet, as he states, ‘societies only exist in so far as they are created and re-created in our actions as human beings. In social theory we cannot treat human activities as though they were determined by causes in the same way as natural events are. We have to grasp what I would call the *double involvement* of individuals and institutions: we create society as we are created by it.’²²

For the purposes of this book, privacy will be treated in the context of the relationship between the individual and Western liberal society, with its central tenets of democracy and commitment to individualism, and its concern for personal privacy. A specific context for privacy has to be supplied, because as a purely abstract concept it can only be defined meaningfully in terms of the cultural norms of a particular society and the position of the individual within that society. As Benn has stated, ‘The judgements we make about our privacy arrangements must take the rest of our cultural ideals largely as we find them. Individuals like ourselves in our kind of culture, then, do have an interest in privacy in the management of the internal economy of their own personalities and of their personal relations with others.’²³

In a developed, technologically advanced society information can be disseminated with great rapidity. People share their lives not only with family and friends but also with many other persons who live or work in the same places, who frequent the same establishments or who communicate over the internet. Strangers become pseudo-intimates, and vast tracts of a person’s life can be shared with people for whom she may feel very little, yet about whom she may know a great deal. But because individuals often do not choose these pseudo-intimates, and because they cannot necessarily control the flow of information about themselves between such persons and others, they can experience an increasing sense of loss in relation to a side of their lives that has come to epitomise the private sphere, namely, the realm of personal information.²⁴ At the same time, the physical division between the workplace and the

²¹ A. Giddens, *Sociology: A Brief But Critical Introduction*, 2nd edn (London, Macmillan, 1986), p. 8. Social systems he defines as: ‘[involving] patterns of relationships among individuals and groups’, p. 12.

²² *Ibid.*, p. 11.

²³ S. I. Benn, *A Theory of Freedom* (Cambridge University Press, New York, 1988), p. 287.

²⁴ See A. Charlesworth, ‘Data Privacy in Cyberspace: Not National vs. International but Commercial vs. Individual’, in L. Edwards and C. Waelde (eds.), *Law and the Internet: A Framework for Electronic Commerce* (Oxford, Hart Publishing, 2000), pp. 79–122.

Cambridge University Press

0521660270 - Genetic Privacy: A Challenge to Medico-Legal Norms

Graeme Laurie

Excerpt

[More information](#)

home has led to a greater separation between the two environments in people's minds,²⁵ with an increased reluctance to allow one to encroach on the other. Indeed, Prost has documented the spread of privacy concerns through all strata of society in the twentieth century. As he says, 'the twentieth century may be seen as a period during which the differentiation of public and private, at first limited to the bourgeoisie, slowly spread throughout the population. Thus, in one sense the history of private life is a history of democratization.'²⁶

Privacy: a definition

The notions of privacy considered above embody two conceptions of privacy. First, it can be viewed as a state of non-access to the individual's physical or psychological self – what can be called *spatial privacy*. Second, privacy can be seen as a state in which personal information about an individual is in a state of non-access from others – *informational privacy*.²⁷ One unifying definition can be deduced from these two concepts: privacy is a state of separateness from others. This is the definition of privacy that is adopted in this book and the reasons for this choice will be more fully considered and justified in chapter 2. For the moment, privacy should be taken to refer to a state in which an individual is apart from others, either in a bodily or psychological sense or by reference to the inaccessibility of certain intimate adjuncts to their individuality, such as personal information.

Why protect privacy?

Private interests

It has been posited that a need for individual privacy arose in tandem with the evolution of Western liberal democracy. It has also been suggested that the privacy interests of individuals are of two distinct kinds.

²⁵ See A. Prost, 'Public and Private Spheres in France', in A. Prost and G. Vincent (eds.), *A History of Private Life* (London, Belknap Press, 1991), V, pp. 9–49.

²⁶ A. Prost, 'Introduction', in Prost and Vincent, *A History of Private Life*, p. 7.

²⁷ This view of privacy corresponds largely with a layman's view of the concept. The Younger Committee on privacy found that the responses of individuals to questions in a commissioned survey about what constituted invasions of privacy tended to place the notion of privacy into one or both of two groups: freedom from intrusion or privacy of information, see Younger Committee, *Report of the Committee on Privacy*, Cmnd 5012 (1972), p. 32.

Cambridge University Press

0521660270 - Genetic Privacy: A Challenge to Medico-Legal Norms

Graeme Laurie

Excerpt

[More information](#)

What has not been explained is why individuals need privacy. Several arguments can be made.

First, a state of physical separateness from others is necessary in order to allow personal relationships to begin and to grow. The levels of intimacy that typify the modern personal relationship can only be achieved by ensuring and securing separateness from others. Trust – which is essential to the establishment and maintenance of all relationships – requires not only a degree of intimacy to develop but also a currency in which to deal. An important part of that currency is personal information. Individuals trade private information both as a sign of trust and on the basis of trust. The security of the information is guaranteed by the tacit undertaking that it will not be noised abroad. In this way personal and professional relationships flourish and an important part of the fabric of society is woven more tightly.²⁸ As Fried has said,

Love and friendship . . . involve the initial respect for the rights of others which morality requires of everyone. They further involve the voluntary and spontaneous relinquishment of something between friend and friend, lover and lover. The title to information about oneself conferred by privacy provides the necessary something. To be friends or lovers persons must be intimate to some degree with each other. Intimacy is the sharing of information about one's actions, beliefs, or emotions which one does not share with all, and which one has the right not to share with anyone.²⁹

Second, a degree of separateness allows the individual personality to reflect on experiences and to learn from them. Constant company requires unceasing interaction and this in turn deprives the individual of time to assimilate life experiences and to identify her own individuality.³⁰

Third, it has been said that the modern psychological make-up of individuals is such that a degree of separateness is required to ensure that individuals retain a degree of mental stability. Jouard has put a forceful argument that (Western) public life puts considerable strain on individuals, who must assume personae in order to integrate successfully with others.³¹ These personae, being designed to conceal the true

²⁸ See Fried, 'Privacy'.

²⁹ C. Fried, *An Anatomy of Values: Problems of Personal and Social Choice* (Cambridge, MA, Harvard University Press, 1970), p. 142.

³⁰ M. Van Manen and B. Levering, *Childhood's Secrets: Intimacy, Privacy and the Self Reconsidered* (Williston, VT, Teachers College Press, 1996).

³¹ Jouard, 'Some Psychological Aspects of Privacy', and see generally n. 2 above.

Cambridge University Press

0521660270 - Genetic Privacy: A Challenge to Medico-Legal Norms

Graeme Laurie

Excerpt

[More information](#)

personality of the individual, cannot be maintained indefinitely without serious psychological consequences. A state of privacy allows the masks to be dropped and a degree of release to be obtained.

Fourth, tangible harm can come to an individual who is not granted a degree of privacy. Concerning spatial privacy, unauthorised invasion of the body is disrespectful of the individual and may cause physical harm. The criminal and civil laws of assault recognise and protect the inviolability of the physical self in this regard. Perhaps less obvious but no less valid, however, is the psychological harm that can arise if spatial privacy is not respected. For example, clandestine observation can produce profound feelings of violation in individuals even when no actual physical contact occurs.³² Similarly, even within a paradigm of the private sphere such as the family home, an individual's psychological spatial privacy can be invaded if she is subjected to imposed stimuli, such as another family member's choice of music. Considerable mental anguish can occur as a result.³³

Beyond spatial privacy concerns, the invasion of one's *informational* privacy can also lead to harm to individuals. Information about one's personal condition, behaviour or habits that others find distasteful can lead to individuals being ostracised by communities or becoming the object of violence and discrimination. As Greenawalt puts it, 'One reason why information control seems so important is precisely because society is as intolerant as it is, precisely because there are so many kinds of activity that are subject to overt government regulation or to the informal sanctions of loss of job or reputation.'³⁴

Public interests

One final argument in support of protection of privacy can be offered. The above points concentrate on individual private interests. But there are also public interests in privacy protection. It can be argued, for example, that it is in the public (societal) interest to have a community inhabited by rounded individuals as opposed to two-dimensional

³² See Benn, 'Privacy, Freedom and Respect for Persons', 230–1, and this is equally true when no personal information is gathered.

³³ C. M. Gurney, 'Transgressing Private–Public Boundaries in the Home: A Sociological Analysis of the Coital Noise Taboo' (2000) 13 *Venereology – The Interdisciplinary International Journal of Sexual Health* 39.

³⁴ K. Greenawalt, 'Privacy and its Legal Protections' (1974) 2 *Hastings Center Studies* 45, 53.

characters.³⁵ Similarly, it is clearly in the interests of a society which holds the individual in esteem to reduce all potential harm to individuals to a minimum.

Paradoxically, however, it is the development of a public interest in the welfare of individuals that has proved to be one of the greatest threats to individual privacy in the last century. This might be termed the phenomenon of the interventionist state, and it is a trend that has emerged as a central tenet of the Western liberal tradition. It is born out of democratic developments in the twentieth century that heralded an expanding role for the state and a marked increase in the interest which states show in the lives of their citizens. For example, most Western states have assumed a degree of responsibility for the provision of basic services such as housing and utilities, subsistence benefits, education and child welfare. The provision of health care is of primary importance among these; indeed, with the notable exception of the United States, a national health service is a key feature of many Western democracies. On another level, Western societies are typified by a glut of legislation stemming from paternalistic attitudes of the state towards its citizens. Thus, we find legislation prohibiting or severely restricting sales of alcohol and other drugs, limiting the purchase of lottery tickets, and requiring the wearing of seat belts or safety helmets when using motor vehicles. Such legislation comes in a variety of forms ranging from prohibition with the threat of criminal sanction, through civil liability, to the use of fiscal means to control citizens' behaviour. Strömholm explains this in part when he writes:

prevailing democratic ideologies stress the need for continuous debate on matters of public interest... the complexity of modern society and the subtle interwovenness of facts and interests within its framework have led to the feeling that almost everything concerns everyone in one sense or another. Thus, any unimportant event may touch upon matters in which the public may claim a legitimate interest.³⁶

³⁵ Benn notes that 'the children of the kibbutz have been found by some observers defective as persons, precisely because their emotional stability has been purchased at the cost of an incapacity to establish deep personal relations. Perhaps we have to choose between the sensitive, human understanding that we achieve only by the cultivation of our relations within a confined circle and the extrovert assurance and adjustment that a *Gemeinschaft* can offer. However this may be, to the extent that we value the former, we shall be committed to valuing the right of privacy', in 'Privacy, Freedom and Respect for Persons', p. 237.

³⁶ S. Strömholm, *Rights of Privacy and Rights of the Personality: A Comparative Study* (P. A. Norstedt and Söners Forlag, Stockholm, 1967), p. 17.

Cambridge University Press

0521660270 - Genetic Privacy: A Challenge to Medico-Legal Norms

Graeme Laurie

Excerpt

[More information](#)

Hence, while individual interests are given more importance in democratic communities, public interests are, at the same time, afforded greater weight. This increases tension at the interface between the public and private areas of life and requires that we define as clearly as possible where the boundaries of the two spheres lie. It is a function of privacy to provide a mechanism to ensure that such boundaries are well constituted. Privacy also forces recognition of the fact that at times certain areas of life can, and should, be kept separate. As Schoeman states, ‘respect for privacy signifies our recognition that not all dimensions of persons or relationships need to serve some independently valid social purpose’.³⁷

Finally, it should not be overlooked that harm can come to society itself if privacy is not respected. Important and valuable information will not be communicated if the element of trust that is so crucial to the development of relationships is lost because individuals cannot be guaranteed security of information. This can render important social organs impotent. An apposite example of this can be seen in the medical confidentiality decision of *X v. Y*.³⁸ A newspaper gained access to the medical files of two doctors suffering from AIDS who were continuing to work in general practice. The newspaper sought to disclose this information and argued that it was justified in doing so because the public had a right to know the facts. The court, however, rejected this argument and, in issuing an injunction, held that there was an overriding public interest in respecting the confidences of people such as the two doctors. Rose J summed up his reasoning as follows: ‘In the long run, preservation of confidentiality is the only way of securing public health; otherwise doctors will be discredited as a source of information, for future patients “will not come forward if doctors are going to squeal on them”’.³⁹ Similarly, in *Jaffee v. Redmond*⁴⁰ the US Supreme Court opined that the public good would be best served by protecting the confidentiality of mental health records and so preserving the special relationship of trust between psychotherapist and patient.

As these sentiments indicate, just as there are public and private reasons to protect privacy, the effective protection of privacy can serve both public and private ends.

³⁷ See F. D. Schoeman, ‘Privacy and Intimate Information’, in Schoeman, *Philosophical Dimensions of Privacy*, ch. 17, p. 413.

³⁸ *X v. Y* [1988] 2 All ER 648. ³⁹ *Ibid.*, at 653.

⁴⁰ *Jaffee v. Redmond* 518 US 1; 116 S. Ct. 1923 (1996).